



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

TDD (804) 698-4021

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

April 9, 2009

Mr. Jack Hobbs
Town Manager
Town of Amherst
P.O. Box 388
Amherst, VA 24521

RE: Virginia Water Protection Individual Permit Number 08-2105
Town of Amherst, Buffalo River Intake, Amherst, Virginia
Final Permit Package

Dear Mr. Hobbs:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 et seq., § 401 of the Clean Water Act Amendments of 1977, and Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the withdrawal of water from the Buffalo River for public water supply purposes.

This permit is valid for 15 years from the date of issuance. No extension of the permit may occur, as the permit term cannot exceed the maximum of 15 years.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 calendar days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§62.1-44.16, 62.1-44.17, and 62.1-44.19 of the State Water Control Law aggrieved by any action the board has taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said petition must meet the requirements set forth in the board's Procedural Rule Number 1 (9 VAC 25-230-130 B). In cases involving actions of the board, such petition must be filed within 30 calendar days after notice of such action is sent to such owner by certified mail.

Mr. Jack Hobbs
Town of Amherst, VA
Page 2 of 2

If you have any questions, please contact Scott Kudlas at (804) 698-4456 or swkudlas@deq.virginia.gov.

Sincerely,



Brenda K. Winn
Senior Environmental Specialist / Permit Writer

Attachments: Permit Cover Page, Part I Special Conditions, Part II General Conditions

cc: Nora Iseli, USACE



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VWP Individual Permit Number 08-2105

Effective Date: April 9, 2009

Expiration Date: April 8, 2024

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

Permittee: Town of Amherst

Address: 186 South Main St., P.O. Box 280, Amherst, VA 24521

Activity Location: The intake is located just north of the Town of Amherst on the Buffalo River at the terminus of Rt. 718 in Amherst County, Virginia.

Activity Description: The withdrawal of up to 0.99 million gallons per day of water from the Buffalo River for public water supply purposes.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions including Attachment A, and Part II - General Conditions.

Allen Bulinsky
Director, Water Division

April 9, 2009
Date

Part I – Special Conditions

A. Authorized Activities

1. This permit authorizes the withdrawal of up to 0.99 million gallons per day of water from the Buffalo River and the maintenance of the intake structure when work is accomplished in accordance with Section B. Standard Project Conditions. This permit is based on material conditions indicated in the Joint Permit Application dated November 5, 2008, received on November 20, 2008, and deemed complete on January 26, 2008.
2. The project activities, including any conditions and limitations, shall be adhered to as described in the Joint Permit Application and any supplemental materials approved by DEQ.
3. The permittee shall notify the DEQ Office of Wetlands and Water Protection (see address in condition D.1) of any additional impacts to surface waters, including wetlands or any change to the type of wetland impacts, associated with this project. Any additional impacts to surface waters, including wetlands, or any change to the type of wetland impacts, shall be subject to individual permit review or modification of this permit, and compensation may be required.
4. This permit is valid for 15 from the date of issuance. Reissuance of the permit may be necessary if any portion of the authorized activities or any permit requirement has not been completed. The original permit term and extension cannot exceed the maximum of 15 years.

B. Standard Project Conditions

1. The activities authorized by this permit shall be executed in a manner to minimize any adverse impact on stream beneficial uses, as defined in § 62.1-10(b) of the Code.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams shall be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. The activity shall not impede the passage of normal or expected high flows and the structure or discharge shall withstand expected high flows. Flows downstream of the project area shall be maintained to protect all uses.
3. Any excavation, dredging, and/or filling in surface waters shall be accomplished in a manner that minimizes stream bottom disturbances and turbidity increases.

4. Virginia Water Quality Standards shall not be violated in any surface water as a result of the project activities.
5. Any heavy equipment in temporarily impacted surface waters shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practical. Mats shall be removed as soon as the work is complete.
6. The permittee shall employ measures to prevent spills of fuels, lubricants, or other pollutants into surface waters.
7. Wet or uncured concrete shall be prohibited from entry into surface waters.
8. No machinery may enter surface waters, unless authorized by this permit.
9. In issuing this permit, DEQ has not taken into consideration the structural stability of any proposed structure.

C. Water Conservation and Water Withdrawal Conditions

1. In the event that the Governor or the Virginia Drought Coordinator declares a drought emergency in the Middle James Drought evaluation Region, which includes Amherst County, the permittee shall implement the mandatory conservation measures, as detailed in Attachment A of this permit. The permittee shall be responsible for determining when drought emergencies are declared. DEQ may require documentation that mandatory conservation measures were implemented during declared drought emergencies.
2. The maximum daily withdrawal shall not exceed 0.99 million gallons; the maximum instantaneous withdrawal shall not exceed 694 gallons per minute; and the maximum annual withdrawal shall not exceed 365 million gallons.

D. Required Notifications and Submittals

1. All written communications required by this permit shall be submitted to:

Attn: VWP Permit Manager (08-2105)
Virginia Dept. of Environmental Quality
Office of Wetlands and Water Protection
P.O. Box 1105
Richmond, Virginia 23218

The permit number shall be included on all correspondence.

2. All reports required by this permit and other information requested by DEQ shall be signed by the applicant or a person acting in the applicant's behalf, with the authority to bind the applicant. A person is a duly authorized representative only if *both* criteria below are met. If a representative authorization is no longer valid because of a change in responsibility for the overall operation of the facility, a new authorization shall be immediately submitted to DEQ.
 - a. The authorization is made in writing by a person described above; and
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
3. All submittals required by this permit shall contain the following signed certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.
4. Any fish kills or spills of fuels or oils shall be reported immediately upon discovery. If spills or fish kills occur between the hours of 8:15 AM to 5:00 PM Monday through Friday, DEQ shall be notified at the Blue Ridge Regional Office - Lynchburg at (434) 582-5120 otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.
5. DEQ shall be notified in writing when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.

E. Water Use Reporting Regulation

1. If total ground water and surface water withdrawals exceed 10,000 gallons per day on average in any month, the permittee shall report the withdrawals to DEQ by January 31st

of the next year as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200-10). The annual monitoring report shall contain the following information: the permittee's name and address, the sources and locations of water withdrawal, the cumulative volume of water withdrawn each month of the calendar year, the maximum day withdrawal volume and the month in which it occurred, and the method of withdrawal measurement. *For permittees subject to the Virginia Department of Health (VDH) Waterworks Regulations*, the annual reports to DEQ may include, as an alternative, the source and location of water withdrawals, the type of use for the water withdrawn, and reference to the reports filed with VDH that contain the monthly withdrawal data.

Attachment A - Water Conservation

Mandatory Non-essential Water Use Restrictions

The following non-essential water uses will be prohibited during periods of declared drought emergencies. Please note the exceptions that follow each prohibited use. These prohibitions and exceptions will apply to uses from all sources of water and will only be effective when the Governor of Virginia or the Virginia Drought coordinator declares a Drought Emergency. Water use restrictions shall not apply to the agricultural production of food or fiber, the maintenance of livestock including poultry, nor the commercial production of plant materials so long as best management practices are applied to assure the minimum amount of water is utilized.

Unrestricted irrigation of lawns is prohibited.

- Newly sodded and seeded areas may be irrigated to establish cover on bare ground at the minimum rate necessary for no more than a period of 60 days. . Irrigation rates may not exceed one inch of applied water in any 7-day period.
- Gardens, bedding plants, trees, shrubs and other landscape materials may be watered with hand held containers, hand held hoses equipped with an automatic shutoff device, sprinklers or other automated watering devices at the minimum rate necessary but in no case more frequently than twice per week. Irrigation should not occur during the heat of the day.
- All allowed lawn irrigation must be applied in a manner to assure that no runoff, puddling or excessive watering occurs.
- Irrigation systems may be tested after installation, routine maintenance or repair for no more than ten minutes per zone.

Unrestricted irrigation of athletic fields is prohibited.

- Athletic fields may be irrigated between the hours of 9:00 p.m. and 10:00 a.m. at a rate not to exceed one inch per application or more than a total of one inch in multiple applications during any ten-day period. All irrigation water must fall on playing surfaces with no outlying areas receiving irrigation water directly from irrigation heads.
- Localized dry areas that show signs of drought stress and wilt (curled leaves, foot-printing, purpling) may be syringed by the application of water for a cumulative time not to exceed fifteen minutes during any twenty four hour period. Syringing may be accomplished with an automated irrigation system or with a hand held hose equipped with an automatic shutoff device at the minimum rate necessary.
- Athletic fields may be irrigated between the hours of 9:00 p.m. and 10:00 a.m. during necessary overseeding, sprigging or resodding operations at the minimum rate necessary for a period that does not exceed 60 days. Irrigation rates during this restoration period may not exceed one inch of applied water in any seven-day period.

Syringing is permitted during signs of drought stress and wilt (curled leaves, foot-printing, purpling).

- All allowed athletic field irrigation must be applied in a manner to assure that no runoff, puddling or excessive watering occurs.
- Irrigation is prohibited on athletic fields that are not scheduled for use within the next 120-day period.
- Water may be used for the daily maintenance of pitching mounds, home plate areas and base areas with the use of hand held containers or hand held hoses equipped with an automatic shutoff device at the minimum rate necessary.
- Skinned infield areas may utilize water to control dust and improve playing surface conditions utilizing hand held containers or hand held hoses equipped with an automatic shutoff device at the minimum rate necessary no earlier than two hours prior to official game time.

Washing paved surfaces such as streets, roads, sidewalks, driveways, garages, parking areas, tennis courts, and patios is prohibited.

- Driveways and roadways may be pre-washed in preparation for recoating and sealing.
- Tennis courts composed of clay or similar materials may be wetted by means of a hand-held hose equipped with an automatic shutoff device at the minimum rate necessary for maintenance. Automatic wetting systems may be used between the hours of 9:00 p.m. and 10:00 a.m. at the minimum rate necessary.
- Public eating and drinking areas may be washed using the minimum amount of water required to assure sanitation and public health.
- Water may be used at the minimum rate necessary to maintain effective dust control during the construction of highways and roads.

Use of water for washing or cleaning of mobile equipment including automobiles, trucks, trailers and boats is prohibited.

- Mobile equipment may be washed using hand held containers or hand held hoses equipped with automatic shutoff devices provided that no mobile equipment is washed more than once per calendar month and the minimum amount of water is utilized.
- Construction, emergency or public transportation vehicles may be washed as necessary to preserve the proper functioning and safe operation of the vehicle.
- Mobile equipment may be washed at car washes that utilize reclaimed water as part of the wash process or reduce water consumption by at least 10% when compared to a similar period when water use restrictions were not in effect.
- Automobile dealers may wash cars that are in inventory no more than once per week utilizing hand held containers and hoses equipped with automatic shutoff devices, automated equipment that utilizes reclaimed water as part of the wash process, or automated equipment where water consumption is reduced by at least 10% when compared to a similar period when water use restrictions were not in effect.

- Automobile rental agencies may wash cars no more than once per week utilizing hand held containers and hoses equipped with automatic shutoff devices, automated equipment that utilizes reclaimed water as part of the wash process, or automated equipment where water consumption is reduced by at least 10% when compared to a similar period when water use restrictions were not in effect.
- Marine engines may be flushed with water for a period that does not exceed 5 minutes after each use.

Use of water for the operation of ornamental fountains, artificial waterfalls, misting machines, and reflecting pools is prohibited.

- Fountains and other means of aeration necessary to support aquatic life are permitted.

Use of water to fill and top off outdoor swimming pools is prohibited.

- Newly built or repaired pools may be filled to protect their structural integrity.
- Outdoor pools operated by commercial ventures, community associations, recreation associations, and similar institutions open to the public may be refilled as long as:
 - Levels are maintained at mid-skimmer depth or lower,
 - Any visible leaks are immediately repaired,
 - Backwashing occurs only when necessary to assure proper filter operation,
 - Deck areas are washed no more than once per calendar month (except where chemical spills or other health hazards occur),
 - All water features (other than slides) that increase losses due to evaporation are eliminated, and
 - Slides are turned off when the pool is not in operation.
- Swimming pools operated by health care facilities used in relation to patient care and rehabilitation may be filled or topped off.
- Indoor pools may be filled or topped off.
- Residential swimming pools may be filled only to protect structural integrity, public welfare, safety and health and may not be filled to allow the continued operation of such pools.

Water may be served in restaurants, clubs, or eating-places only at the request of customers.

Part II – General Conditions

A. Duty to Comply

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

D. VWP Permit Action

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9VAC25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9VAC25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9VAC25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

E. Inspection and Entry

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;

- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

H. Transferability

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

I. Property rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

J. Reopener

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show

material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

K. Compliance with State and Federal Law

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. Permit Termination

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9VAC25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

O. Civil and Criminal Liability

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and Hazardous Substance Liability

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Unauthorized Discharge of Pollutants

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.
4. On or after October 1, 2001 conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions
 - b. Filling or dumping
 - c. Permanent flooding or impounding
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.